



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 441

IN THE MATTER
OF
KEVIN MULLEN

DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and Kevin Mullen (Mr. Mullen) pursuant to §5 of the Commission's **Enforcement Procedures**. This Agreement constitutes a consented to final Commission order enforceable in the Superior Court pursuant to G.L. c. 268B, §4(j). On June 10, 1991, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Mr. Mullen. The Commission has concluded that inquiry and, on April 8, 1992, found reasonable cause to believe that Mr. Mullen violated G.L. c. 268A.

The Commission and Mr. Mullen now agree to the following findings of fact and conclusions of law:

1. At all times here relevant, Mr. Mullen was employed by the Massachusetts Department of Public Utilities (DPU) as an inspector assigned to the Commercial Motor Vehicle Division (CMVD).

2. The principal functions of the CMVD relate to the administrative enforcement of the Massachusetts Motor Carrier Act, G.L. c. 159B. That chapter regulates persons transporting property for compensation by motor vehicles, and provides for administrative and criminal sanctions for violation of its provisions.

3. General Laws c. 159B and the regulations promulgated pursuant thereto require all common carriers operating in Massachusetts to file with the DPU written

tariff schedules showing their current prices for their services.

4. Mr. Mullen's official duties and responsibilities as a CMVD inspector included the periodic inspection of records of common carriers for compliance with applicable state laws and regulations, the investigation of all complaints involving those common carriers, and the gathering of evidence for administrative and/or criminal prosecution of violations of the above-cited laws and regulations. Those duties also included assisting carriers with any questions they had with respect to the preparation of their written tariff schedules.

5. On five occasions during 1989, Mr. Mullen participated in a scheme by which he received from each of the common carriers listed below \$100 for preparing and filing tariff schedules:

- a. John's of Freetown, Inc.;
- b. John's Autobody;
- c. Canton Auto & Truck Repairs, Inc.;
- d. Matthers Service Station; and
- e. C&F Towing Service.

6. In each of the above identified instances, Mr. Mullen suggested to a representative of the common carrier that he could arrange to have James Gould, Jr., a person he represented to be a former DPU employee, prepare the tariff certificate for \$100. On each such occasion Mr. Mullen accepted a check payable to James

Gould, Jr. in the amount of \$100. Mr. Mullen deposited those checks in a joint account which he shared with Gould. Mr. Mullen and Gould then split the proceeds from those checks. Mr. Mullen prepared and filed the tariff certificate on each occasion.

7. Chapter 268A, §4(a) provides that no state employee shall otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receive or request compensation from anyone other than the Commonwealth or a state agency in relation to any particular matter in which the Commonwealth or a state agency is a party or has a direct and substantial interest.

8. At all times here relevant, Mr. Mullen was a “state employee” as that term is defined in G.L. c. 268A, §1(q).^{1/}

9. It was not within the proper discharge of Mr. Mullen’s official duties to receive private compensation from anyone in connection with the preparation of a tariff certificate.

10. A tariff certificate is a particular matter^{2/} in which the Commonwealth has an obvious direct and substantial interest.

11. The \$100 Mr. Mullen shared with Gould on each of the above-described occasions was compensation^{3/} for Mullen’s services in preparing and filing the tariff certificate.

12. By receiving \$100 on each of the five occasions described above for the preparation and filing of a tariff certificate, Mr. Mullen otherwise than as provided by law for the proper discharge of official duties received compensation from a person other than the Commonwealth or a state agency in relation to a particular matter in which the Commonwealth had a direct and substantial interest, thereby violating §4(a).^{4/}

In view of the foregoing violations of G.L. c. 268A, §4(a), the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings on the basis of the following terms and conditions agreed to by Mr. Mullen:

1. that he pay to the Commission the sum of two thousand dollars (\$2,000.00) for his course of conduct in violating G.L. c. 268A, §4(a);
2. that he pay the Commission the sum of five hundred dollars (\$500.00) as a forfeiture of the unlawful benefit he and Gould received by violating §4(a); and
3. that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceeding to which the Commission is or may be a party.

Date: May 11, 1992

^{1/}Mr. Mullen resigned his CMVD investigator position on November 17, 1989.

^{2/}“Particular matter,” any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

^{3/}“Compensation” is defined as “any money or thing of value or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.” G.L. c. 268A, §1(a).

^{4/}As the Commission stated *In re Bagni*, 1980 SEC 30, 32: “Whenever state employees receive compensation from a private interest or represent them in matters in which the state also has an interest, there is the potential that employees will favor those private interests at the expense of the state. Such favoritism is especially pernicious where the state employee is receiving compensation from a private party which has dealings with, has a matter pending before, or is regulated by the state employee’s own agency or where the employee represents the private party in its dealings with his or her own agency. No state employee could ever in good faith think it appropriate to conduct private business with the very people he is duty-bound to regulate.”